

October 1, 2007

Honorable Deborah Taylor Tate
Co-Chair, Federal-State Joint Board on
Universal Service
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Honorable Ray Baum
Co-Chair, Federal-State Joint Board on
Universal Service
Oregon Public Service Commission
550 Capitol Street, N.E., Suite 215
P.O. Box 2148
Salem, OR 97308

Re: In the Matter of the Federal-State Joint Board on Universal Service Proceeding on Long-Term Comprehensive High-cost Universal Service Reform, WC Docket 05-337, and CC Docket 96-45.

Dear Commissioner Tate and Commissioner Baum:

The National Telecommunications Cooperative Association (NTCA)¹ applauds the Federal-State Joint Board on Universal Service (Joint Board) for developing the recently announced reform principles that will be incorporated into its recommendation for long-term universal service reform to ensure the sustainability of universal service. NTCA also commends both of you for your leadership in continuing to move the process forward by articulating these principles early in the deliberative process. NTCA has also filed in support of the interim cap on CETC funding as proposed by the Joint Board in its earlier recommended decision.

NTCA has thoughtfully developed a plan that addresses the major problems with the current Universal Service program, while controlling the size of the fund. As the Joint Board recognized with its recommendation to place an interim cap on the fund, it is absolutely necessary for the FCC to control the overall growth and ensure the long term sustainability of the fund in order to accomplish the goals of the Telecommunications Act. We offer the following five-point NTCA USF Reform Plan (Plan) for the Joint Board's consideration in its long-term USF reform recommendation:

1. Eliminate the identical support rule.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

2. In the short-term, while the Commission implements a long-term substitute for the identical support rule, the Commission should remove the portability of access cost recovery support (ICLS, LSS, and IAS)² to wireless competitive eligible telecommunications carriers (CETCs).
3. In the long-term, the FCC should determine the future basis of high-cost universal service fund (USF) support for various sized wireless CETCs. The FCC should open a proceeding to establish the requirements and the specific methodology for determining actual cost-based support for CETCs.
4. The Joint Board and FCC should immediately open a separate Universal Service Redefinition proceeding to consider whether to include broadband in the definition of universal service, and if so how to include broadband in that definition.
5. The Joint Board should recommend as part of the Universal Service Redefinition proceeding that the FCC consider a small broadband USF pilot grant program available to small, medium and large landline and wireless non-rate-of-return carriers with NTCA's proposed limitations and conditions listed below. The pilot program considered should be significantly smaller in the near term in order to evaluate the effectiveness of any future grant program and to provide room for intercarrier compensation reform so that the high-cost USF fund does not increase dramatically before the FCC can address the longer term universal service and intercarrier compensation issues.

NTCA believes its Plan meets the Joint Board's goals and addresses the needs of small, medium, and large landline and wireless communications providers.

1. Eliminate the Identical Support Rule.

The Joint Board, the Commission, and members of Congress have called for the elimination of the identical support rule.³ NTCA has consistently supported the elimination of the identical support rule as appropriate policy, as well as a method for reasonably controlling the growth of the fund. Given the endorsement from the Joint Board to eliminate equal support there is no reason why the FCC should not move forward as an interim measure and eliminate access recovery support from the identical support rule or in the alternative to adopt the interim cap on CETC USF Support as proposed by the Joint Board earlier this year.

² Interstate Common Line Support (ICLS), Local Switching Support (LSS), and Interstate Access Support (IAS).

³ 7 C.F.R. § 54.307. The identical support rule allows CETCs to receive the same per-line support as rural ILECs based on the ILEC's costs.

National and regional wireless carriers are not “rural telephone companies” as defined by the Telecommunications Act of 1996.⁴ Because of the identical support rule, however, these large wireless providers are able to receive substantial amounts of high-cost support tied to “rural telephone company” costs that have no relationship to their wireless costs.⁵ Indeed, CETC support has escalated from \$106 million in 2003 to \$1.03 billion in 2006,⁶ an 870 percent change over this three-year period. During this same time, ILEC high-cost USF support has remained unchanged at \$3.17 billion.⁷ The identical support rule is clearly the root of the escalating fund problem.

The identical support rule allows CETCs to receive the same per-line support as rural ILECs based on the ILEC’s costs.⁸ Currently it is entirely permissible for a large wireless CETC to receive rural support even if it can be extremely profitable in rural markets without support. Indeed, the District Court in Nemaha County, Kansas, overturned a decision by the Kansas Commission that would have made state universal service support received by rural ILECs portable to CETCs on a per-line basis. The Court determined that providing support to a CETC based on the costs of an ILEC is not competitively neutral, finding that:

The Order of the [Kansas Corporation] Commission violates the [state’s] statutory requirement to make distributions in a “competitively neutral manner,” because the Commission has failed to evaluate all the necessary cost/expense information from all providers. The LEC’s [sic] are different in structure and treatment than the wireless providers. Attempting to establish competitive neutrality without evaluating all providers’ costs and expenses means that the [Kansas Corporation] Commission has compared apples to oranges. In order that its orders are competitively neutral, the [Kansas Corporation] Commission must compare the same units of measure.⁹

⁴ Based on a Joint Board recommendation, in 1997 the Commission adopted, for universal service purposes, a definition of rural carrier that mirrored the definition of “rural telephone company” found in section 153(37) of the Act. See 47 U.S.C. § 153(37); *Universal Service First Report and Order*, 12 FCC Rcd at 8943-44, ¶ 310.

⁵ National and regional wireless carriers are currently receiving per-line support based on the costs of many small, landline, incumbent rural telephone companies serving less than 50,000 customers including such states as Alabama, Iowa, Michigan, Mississippi, Montana, North Dakota, South Dakota, Texas, Virginia, West Virginia, Washington, and Wisconsin.

⁶ See, Universal Service Administrative Company (USAC) filings with the FCC: USAC 1Q2003 HC01 and USAC 2Q2006 HC01.

⁷ *Id.*

⁸ 47 C.F.R. § 54.307.

⁹ *Bluestream Telephone Company, et al vs. Kansas Corporation Commission*, In the District Court of Nemaha County, Kansas, Case Nos. 01-C-39, 01-C-40, 03-C-20, and 2004-CV-19, Memorandum and Decision (rel. April 30, 2004).

This regulatory disparity has created a dangerous incentive for wireless carriers to seek CETC status in rural high-cost areas where they already provide ancillary wireless service to ILEC customers. Even if the management of a wireless carrier knows that its costs are low enough to compete effectively without the additional support, management is compelled by the identical support rule to seek CETC designation so as to maximize profits and avoid lost opportunities to obtain support. This situation has led to a dramatic increase in CETC rural high-cost universal service support over the years. The identical support rule creates an environment that permits wireless CETCs to receive a windfall through universal service support.¹⁰

Even though AT&T is on record supporting partial elimination of the identical support rule,¹¹ AT&T Wireless (previously Cingular Wireless) is seeking eligible telecommunications carrier (ETC) status at the FCC in the state of Georgia.¹² Approval of such a petition will set a precedent that will likely destabilize the high-cost universal service mechanisms. As the Nation's largest wireless provider, AT&T claims 63.7 million wireless subscribers, and reports total operating wireless revenues for six months as of June 30, 2007 of over \$18 billion.¹³ The size and revenue base of AT&T is relevant to gauge the impact that an AT&T ETC designation will have on the USF funding mechanisms and the Commission's public interest determination. The Joint Board should send a clear message that the identical support rule is not in the Nation's public interest and must be eliminated.

2. In the Short-Term, while the Commission Implements a Long-Term Substitute for the Identical Support Rule, the Commission Should Remove ICLS, LSS, and IAS from Wireless CETC Support.

A fair and equitable interim modification to the existing Identical Support Rule would be to remove access replacement support, otherwise known as Interstate Common Line Support (ICLS), Local Switching Support (LSS), and Interstate Access Support (IAS), for wireless CETCs. The Joint Board should recommend the phase out of ICLS, LSS, and IAS to wireless

¹⁰ Salomon Smith Barney, Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers, Multi-Company Note, p. 1 (January 21, 2003) ("USF is the single-most important opportunity for rural wireless carriers to improve their return on capital.") *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5th Cir. July 30, 1999) ("The term 'sufficient' appears in § 254(e), and the plain language of § 254(e) makes sufficiency of universal service support's direct statutory command rather than a statement of one of the seven principles.").

¹¹ AT&T Ex Parte Letter, *In the Matter of the Federal-State Joint Board, High-Cost Universal Service*, WC Docket 05-337, *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (Filed on March 22, 2007).

¹² *Petition of Cingular Wireless, LLC Seeking Designation as an Eligible Telecommunications Carrier (ETC) in the State of Georgia*, CC Docket No. 96-45 (filed December 7, 2006).

¹³ AT&T, Inc. 10Q Report, 2Q2007, filed Aug. 3, 2007. AT&T reports its half-year total operating revenue for all segments was over \$58 billion. This report is available on AT&T's website at: http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control_selectgroup=Quarterly%20Filings.

CETCs as an interim/short-term step toward a long-term substitute for the identical support. If the complete removal of ICLS, LSS, and IAS support to wireless CETCs were adopted immediately, it would result in an immediate reduction of nearly \$520 million¹⁴ in the size of the high-cost Universal Service Fund (USF) mechanisms.¹⁵ This approach is a reasonable interim step while the Commission collects the detailed cost information from wireless carriers necessary to establish support for each carrier in each area served.

There has been a net \$100,000 decrease in combined ICLS, LSS, and IAS support between the first quarter 2004 and the third quarter of 2007.¹⁶ Removing ICLS, LSS, and IAS USF support for wireless CETCs will stabilize the fund and provide the Commission time to implement a long-term cost based methodology for CETC support. It will also provide the Commission with time to implement a long-term USF solutions that will maintain sufficient and stable USF funding that provides incentives for carriers to deploy voice and broadband facilities and services in rural, high-cost areas.

The FCC has determined that wireless carriers do not have the right to impose access charges pursuant to tariff.¹⁷ Thus, wireless carriers do not provide access services and do not rely on access charges as a means to support their networks. High-cost universal service funding designed to replace legitimate access cost recovery should not be available to wireless CETCs that do not impose access charges and have already benefited from access charge reductions under the Commission's CALLS and MAG intercarrier compensation reform orders. In contrast, landline CETCs provide access, bear the costs of providing access, and have relied on access charges as a means of supporting their networks; therefore access replacement support should continue to be available for landline CETCs. Removing access replacement support from wireless CETCs' current support is a reasonable interim step until wireless carriers' specific support can be determined for each wireless carrier based on detailed cost information for each area served.

¹⁴ AT&T Ex Parte Letter, *In the Matter of the Federal-State Joint Board, High-Cost Universal Service, WC Docket 05-337, In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45*, (Filed on March 22, 2007).

¹⁵ Such a reduction in USF support is justified and will eliminate future confusion regarding access reform under the Missoula Plan's, or any other intercarrier compensation reform plan's access reductions, recognizing that the Restructure Mechanism (RM) is cost recovery under Section 201 available only to carriers that actually reduce their access charges in accordance with the Missoula Plan. An RM would compensate LECs for the costs imposed on their networks by other carriers and make up for the revenue lost through mandatory access charge reductions, not otherwise recovered through other sources of funding

¹⁶ Based on USAC data, ICLS has grown by \$123.6 million between the first quarter 2004 and the third quarter of 2007. The growth in ICLS, however, is offset by a \$25.1 million reduction in LSS and a \$98.6 million reduction in IAS during the same time period.

¹⁷ *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd 13192, 13196 ¶1, 8-9, (2002).

3. In the Long-Term, the FCC Should Determine the Future Basis of High-Cost USF Support for Various Sized Wireless CETCs and Open a Proceeding to Establish the Requirements and the Specific Methodology For Determining Actual Cost-Based Support for CETCs.

To correct the problems associated with the identical support rule the Joint Board and the Commission must take into account the fact that wireless carriers do not have the same costs or regulatory obligations as rural ILECs. Wireless carriers do not provide the same quality of local service, do not offer equal access to long distance carriers and do not have carrier of last resort obligations. Unlike rural ILECs, wireless CETCs do not offer equal access to all long distance carriers and hence wireless CETC costs for providing access to a single long distance carrier are likely to be very different than the rural ILEC's costs. In addition, wireless carriers can choose to serve only those customers within range of wireless towers.¹⁸ Rural ILECs do not have this luxury, rather they have made a commitment to provide local service throughout the service area. Finally, rural ILEC networks have been engineered to meet high standards for reliability and either have been or are in the process of being upgraded to provide broadband. Many wireless networks do not meet these strict engineering standards. These distinctions between wireless and wireline service offerings translate into different cost structures and cost levels. Thus, "non-rural" and "rural" wireless carriers designated as CETCs in a rural ILEC study area should not receive the identical per-line support as the ILEC, based on the ILEC's costs. NTCA therefore urges the Joint Board to recommend to the FCC that it should open a proceeding to determine the future basis of high-cost USF support for various-sized wireless CETCs based on their actual costs.

As mentioned previously, the size and revenue base of AT&T and other non-rural and rural wireless carriers are relevant in assisting the FCC to gauge the impact that a wireless CETC designation will have on the USF and the Commission's public interest determination. By eliminating the identical support rule and requiring all wireless CETCs to base their universal service support on their own size and costs, the Joint Board and the FCC will be better able to ensure that support to a wireless CETC is not excessive and used for the purposes intended as required by Section 254(e) of the Act.¹⁹ The Joint Board should send a clear message to the Commission that a wireless carrier's size and costs do matter when it comes to determining whether a wireless CETC's designation is in the Nation's public interest.

¹⁸ One of the most egregious aspects of the identical support rule is that it provides support as if the wireless carrier could serve its customers where they live, when in fact in sparsely populated rural areas this is often not the case. Rural customers frequently may not be able to receive wireless service at the location where they reside, but subscribe to wireless service for use when traveling.

¹⁹ 47 U.S.C. § 254(e).

4. The Joint Board and FCC should Immediately open a Universal Service Redefinition Proceeding to Consider Whether to Include Broadband in the Definition of Universal Service, and if so How to Include Broadband in that Definition.

The Joint Board and FCC should immediately open a proceeding to determine whether broadband should be included in the definition of universal service, and if so how to include broadband in that definition. NTCA encourages the Joint Board and the FCC to continue working with Congress to establish a national broadband policy for the United States. A national policy that will take into consideration the financial burden placed on American consumers and businesses should take place prior to modifying the definition of universal service.

The Joint Board and Commission need to seek ways to help carriers deploy advanced services and make them affordable for American consumers. A separate proceeding focusing exclusively on this issue will enable the Joint Board, the FCC and Congress to understand all potential benefits, difficulties, risks and rewards associated with first defining “broadband” and then considering whether to include that newly defined service into the definition of universal service and its impact on the high-cost USF mechanisms.

5. The Joint Board Should Recommend as part of the Universal Service Redefinition proceeding that the FCC Consider a Small Broadband USF Pilot Grant Program Available to Small, Medium and Large Landline and Wireless Non Rate-of-Return Carriers with NTCA’s Proposed Limitations and Conditions.

NTCA proposes that the FCC adopt a very small broadband pilot USF grant program available to small, medium and large landline and wireless non-rate-of-return carriers. The pilot program should be small in size and focused on understanding the requirements and safeguards that would be necessary to accomplish the objective while assuring that the grants are spent on the intended purpose. NTCA suggests the following limitations and conditions:

1. Broadband grant USF support should not be given to carriers in areas where they have agreed to achieve broadband deployments as part of past and future merger approvals. These promises should not be premised or conditioned upon receiving USF broadband funding. Companies should not be allowed to use federal broadband pilot program monies to subsidize these mergers or fund previous commitments made to regulators and customers.
2. Broadband grant USF support should not be given to carriers in areas where they have included broadband services in their petitions for forbearance from Title II regulation. Some of these carriers’ forbearance petitions have maintained that competition is sufficient to no longer require them to unbundle their networks to CLECs.

3. Broadband grant USF support should not be given to carriers in areas where they have entered into state incentive regulation plans, which require these carriers to achieve specific broadband deployments in return for pricing and earnings flexibility. Companies should not be allowed to use federal broadband pilot program monies to fund previous commitments made to state regulators and customers.
4. Broadband grant USF support should not be given to carriers in areas where there are sufficient broadband services.
5. Broadband grant USF support should not be given to any carrier that has not considered alternative financing sources for broadband deployment including: (1) state USF/Broadband funding, (2) Rural Utility Service (RUS) broadband loans and grants, (3) state broadband tax incentives, (4) federal broadband tax incentives, and (5) other lawful broadband and mobile financing options.²⁰

By including these limitations and conditions on the proposed broadband pilot USF grant program, the Joint Board and FCC will be able to efficiently manage and minimize the size of the broadband grant program and overall size of the high-cost USF funding mechanism. These constraints will also enable the Commission to reduce the overall funding burden on consumers and still achieve its universal service and broadband goals. If the Commission implements NTCA's proposed interim removal of ICLS, LSS, and IAS from wireless CETC support as part

²⁰ In addition to these limitations and conditions, NTCA recommends that the Commission place the following requirements on Internet backbone providers as part of its special access proceeding and net neutrality proceeding:

- a. Internet backbone providers are required to provide all communications network providers with non-discriminatory access to the Internet backbone, including special access transport needed to reach the Internet backbone.
- b. Internet backbone providers are required to price their Internet backbone service, including special access transport needed to reach the Internet backbone, based on their cost to provide the service.
- c. Internet backbone providers are required to provide non-affiliated communications network providers with the same terms, conditions, and prices that the Internet backbone providers charge their affiliated companies for access to the Internet backbone, including special access transport needed to reach the Internet backbone.
- d. Internet backbone providers are required to make publicly available all of the terms, conditions and prices for their Internet backbone services, including special access transport needed to reach the Internet backbone.

To achieve and maintain the goal of universal affordable broadband service for all Americans, the FCC should regulate the terms, conditions and prices of Internet backbone services, including special access transport need to reach the Internet backbone, to ensure that large vertically integrated Internet backbone providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. The FCC has already adopted some of these conditions as part of the FCC's recent approval of the AT&T/BellSouth merger. *In the Matter of A&T and BellSouth Corporation Application for Transfer and Control*, Order on Reconsideration, Appendix, Page 5, WC Docket No. 06-74, (rel. March 26, 2007).

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-44A1.doc.

of long-term USF reform, the Commission will reduce the existing high-cost USF funding mechanisms by approximately \$520 million per year. The overall grant program should not be any larger than the savings achieved by eliminating the identical support rule. The pilot program should be significantly smaller in the near term in order to evaluate the effectiveness of any future grant program and to provide room for intercarrier compensation reform so that the high-cost USF fund does not increase dramatically before the FCC can address the longer term universal service and intercarrier compensation issues.

NTCA is proposing that USF broadband grant support be limited to non-rate-of-return communications providers. Currently, rate-of-return regulated ILECs can qualify for high-cost USF local loop support, when they build-out their voice and broadband infrastructure to consumers in unserved areas within their study areas under the current rural high-cost USF mechanism, and their costs exceed the benchmark in the rural high-cost USF mechanism formula. This policy has enabled the Commission to reach and maintain a 94.6 percent universal service telephone penetration rate in U.S. households.²¹ Price cap ILECs, competitive local exchange carriers (CLECs) and wireless CETCs, however, do not have this same option in large non-rate-of-return ILEC service territories. NTCA therefore recommends that the broadband USF grant program considered be limited to non-rate-of-return regulated providers, including price cap ILECs, CLECs, and wireless CETCs in order to provide affordable broadband services to consumers living in unserved areas in large non-rate-of-return carrier service territories.

CONCLUSION:

NTCA's Plan is consistent with the Joint Board's September 6, 2007 pronouncement that future support mechanisms will focus on voice, broadband and mobility. NTCA's proposed interim and long-term substitutes for the identical support rule and broadband pilot USF grant program directly address the Joint Board's stated principles of: (a) cost control, (b) accountability, (c) state participation, and (d) infrastructure build out in unserved areas. NTCA's Plan would eliminate the identical support rule in a fair and equitable manner as requested by the Joint Board, FCC, and Congress. The Plan would allow wireless CETCs to recover their support based on their own costs. The Plan would also reduce/stabilize the size and growth high-cost USF mechanisms in the interim by decreasing wireless CETC support during the removal of ICLS, LSS, and IAS, an estimated \$520 million. The Plan would further consider providing additional USF grant support to eligible telecommunications carriers through a small broadband USF pilot grant program. Most importantly, NTCA's USF Plan does **not** increase the size of the high-cost USF mechanisms significantly in the long-term and makes room for the FCC to adopt the Missoula Intercarrier Compensation Plan. This proposal will enable the Joint Board and the Commission to accomplish its universal service, broadband and intercarrier compensation reform goals with much less risk to consumers. NTCA therefore urges the Joint Board to consider and

²¹ FCC Report: *Telephone Subscribership in the United States, Data Through March 2007* (rel. June 29, 2007), http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-274714A1.pdf.



include the provisions in NTCA's Long-Term USF Reform plan in its comprehensive universal service reform recommendation to the FCC.

If you have any questions, please feel free to contact me at 703-351-2016 or dmitchell@ntca.org. Thank you for your consideration of NTCA's Long-term USF Reform Plan.

Sincerely,

/s/ Dan Mitchell
Dan Mitchell,
Vice President, Legal and Industry Division